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### REMARKS

Claims 1, 3-11, 13, 15-21, 23, and 25-30 would remain pending after entry of the proposed amendment. Claims 2, 12, 14, 22, and 24 would be canceled. Claims 13 and 23 would be amended to maintain correct dependency. Independent claims 1, 11, and 21 would be amended to incorporate the subject matter of canceled claims 2, 14, and 24, respectively.

Because the proposed amendment merely incorporates the subject matter from dependent claims, it does not necessitate any additional search. Further, it reduces issues for appeal by obviating the rejections of claims 1, 11, 12, 21, and 22 as they existed prior to the proposed amendment. For these reasons, this proposed amendment should be entered.

In the Office Action, the Examiner rejected claims 1-30 under 35 U.S.C. § 102(e) as being anticipated by Tsurushima et al. (U.S. Pub. No. 2001/0047256).

Applicant respectfully traverses the § 102(e) rejection of claims 1, 3-11, 13, 15-21, 23, and 25-30 over Tsurushima et al. Independent claim 1, as amended, requires a system including, *inter alia*, that the template generation component further includes "an audio excerpts database populated by at least one audio excerpt; and a psycho-acoustic model that creates said at least one distortion threshold template, said psycho-acoustic model utilizing said at least one audio excerpt." Independent claims 11 and 21, as amended, require method and device including, *inter alia*, "provid[ing] an audio excerpts database populated by at least one audio excerpt, provid[ing] a psycho-acoustic model suitable for creating distortion threshold templates based on audio excerpts, and creat[ing] said at least one distortion threshold template with said at

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least one audio excerpt by implementation of said psycho-acoustic model.” Tsurushima et al. fails to disclose all elements of the system, method, and device of claims 1, 11, and 21.

Page 2 of the Final Office Action, with respect to claim 1, reads the claimed template generation component on element 532 in Fig. 14 of Tsurushima et al. Page 3 of the Final Office Action, with respect to canceled claim 2, reads the claimed audio excerpts database and psycho-acoustic model on paragraph 0150 of Tsurushima et al.

With regard to claim 1, as proposed to be amended, there is no disclosure in paragraph 0150 of Tsurushima et al. that element 532 (on which the claimed template generation component is read) includes either an audio excerpts database or a psycho-acoustic model, as required by the claim. Hence, the cited portion, and the remainder, of Tsurushima et al. fails to disclose the claimed “audio excerpts database” and “psycho-acoustic model,” and the rejection of amended claim 1 is improper.

With regard to claims 11 and 21, as proposed to be amended, there is no disclosure in paragraph 0150 of Tsurushima et al. or in the description of element 532 that the claimed functions of “provid[ing] an audio excerpts database populated by at least one audio excerpt, provid[ing] a psycho-acoustic model suitable for creating distortion threshold templates based on audio excerpts, and creat[ing] said at least one distortion threshold template with said at least one audio excerpt by implementation of said psycho-acoustic model.” are performed. Hence, the cited portion, and the remainder, of Tsurushima et al. fails to disclose the above-quoted elements and the rejection of amended claims 11 and 21 is improper.

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Because Tsurushima et al. fails to disclose all elements of amended claims 1, 11, and 21 (which correspond to original claims 2, 14, and 24), the § 102(e) rejection of independent claims 1, 11, and 21 is improper and should be withdrawn. Claims 3-10, 13, 15-20, 23, and 25-30 are allowable at least by virtue of their dependence on claims 1, 11, and 21.

Entry of the amendment, reconsideration, and allowance of pending claims 1, 3-11, 13, 15-21, 23, and 25-30 are respectfully requested.

In the event that any outstanding matters remain in this application, Applicant requests that the Examiner contact Alan Pedersen-Giles, attorney for Applicant, at the number below to discuss such matters.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0221 and please credit any excess fees to such deposit account.

Respectfully submitted,

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